

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY RALPH CARRILLO,  
Petitioner,

v.

JIMMY SMITH,  
Respondent.

Case No. [15-cv-0997-TEH](#)

ORDER GRANTING RESPONDENT'S  
MOTION TO DISMISS AND TO SHOW  
CAUSE

Re: Dkt. No. 16

Petitioner Timothy Ralph Carrillo, a state prisoner, proceeds with a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254. Petitioner asserts the following claims: (1) his federal speedy trial and right to due process was violated when the trial court denied his motion to dismiss for failure to comply with California's codification of the Interstate Agreement on Detainers (IAD); (2) ineffective assistance of trial and appellate counsel for failure to obtain pertinent IAD documents; and (3) his sentence violated the Eighth Amendment.

Respondent has filed a motion to dismiss alleging that the first claim is exhausted but the final two claims are unexhausted. Petitioner has filed an opposition seeking to strike the final two claims and proceed solely on the first exhausted claim regarding the denial of his motion to dismiss with respect to the IAD.

For the foregoing reasons, the Court orders as follows:

1           1.     Respondent's motion to dismiss (Docket No. 16) is  
2 GRANTED and claims two and three are struck from the petition.  
3 The petition continues on claim one.

4           2.     Respondent shall file with the Court and serve on  
5 Petitioner, within sixty-three (63) days of the issuance of this  
6 Order, an Answer conforming in all respects to Rule 5 of the  
7 Rules Governing Section 2254 Cases, showing cause why a writ of  
8 habeas corpus should not be granted. Respondent shall file with  
9 the Answer and serve on Petitioner a copy of all portions of the  
10 state trial record that have been transcribed previously and that  
11 are relevant to a determination of the issues presented by the  
12 Petition.

13           If Petitioner wishes to respond to the Answer, he shall do  
14 so by filing a Traverse with the Court and serving it on  
15 Respondent within twenty-eight (28) days of his receipt of the  
16 Answer.

17           3.     In lieu of an Answer, Respondent may file a Motion to  
18 Dismiss on procedural grounds, as set forth in the Advisory  
19 Committee Notes to Rule 4 of the Rules Governing Section 2254  
20 Cases. If Respondent files such a motion, Petitioner shall file  
21 with the Court and serve on Respondent an Opposition or Statement  
22 of Non-Opposition within thirty-five (35) days of receipt of the  
23 motion, and Respondent shall file with the Court and serve on  
24 Petitioner a Reply within fourteen (14) days of receipt of any  
25 Opposition.

26           4.     Petitioner is reminded that all communications with the  
27 Court must be served on Respondent by mailing a true copy of the  
28 document to Respondent's counsel. Petitioner also must keep the

Court and all parties informed of any change of address by filing  
a separate document entitled "Notice of Change of Address."

IT IS SO ORDERED.

Dated: 09/16/2015



THELTON E. HENDERSON  
United States District Judge

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